

DECLARATION OF
COVENANTS AND CONDITIONS
FOR THE
HILLVIEW HEIGHTS SUBDIVISION

This Declaration of Covenants and Restrictions dated as of September 1, 2023, is made by Hillview Heights, LLC, a Vermont limited liability company (the "Declarant"):

Background Statement

WHEREAS, the Declarant desires to subject the real property described in this Declaration, located in the Town of Richmond, Vermont (the Town) to the provisions hereof to create a residential community; and

WHEREAS, the real property described in this Declaration consists of seven (7) Lots of various acreages planned for single-family residences, totaling 85.68 acres of land, with Lot 7 including substantial wooded hillside acreage; and

WHEREAS, all Lots, i.e., Lots 1 through 7, will share common stormwater improvements, and Lots 1 and 2 will share common curb cut and roadway improvements, in each case requiring permanent obligations on those Lot owners for maintenance and repair of the Lots' respective shared, common improvements; and

WHEREAS, in order to impose the necessary shared common improvements obligations on the affected Lots, and to facilitate the development and operation of the seven-Lot subdivision, the Declarant wishes to establish this Declaration;

NOW, THEREFORE, THE Declarant hereby declares that the real property described in Article II of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every Owner of all or any portion thereof.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context shall prohibit, certain words used in this Declaration shall have the following meanings:

- (a) "Community" shall mean and refer to that certain real property and interests therein comprising Hillview Heights, as described in Exhibit "A", and such additions thereto as may be made pursuant to this Declaration.

(b) "Declarant" shall mean and refer to Hillview Heights, LLC, a Vermont limited liability company and the successors in title and assigns of Hillview Heights, LLC, provided that:

- (i) any such successor in title or assignee shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A";
- (ii) in the instrument of conveyance to any such successor in title or assignee, such successor in title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; and
- (iii) upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property in Exhibit "A", which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

(c) "Homeowners Association" shall mean and refer to the Hillview Heights Homeowners Association, its successors and assigns.

(d) "Lot" shall mean a portion of the Community intended for separate ownership, including thereon a residence for use as permitted in this Declaration. "Lot Owner," or "Owner," shall mean the owner of a Lot.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property Hereby Subjected to this Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration, is the real property described in Exhibit "A".

Section 2.02. Other Property. Only the real property described in Section 2.01 is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, the Declarant shall have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

ARTICLE III

USE OF LOTS

Section 3.01. Shared Common Expenses of Certain Lot Owners.

(a) Lots 1 and 2 are subject to a specific covenant whereby each shares equally in the periodic costs of properly maintaining and repairing the portion of their common driveway that connects with Hillview Road, as depicted on the plat of survey included in Exhibit A. The specifics of this obligation shall conform to the Town permits for Hillview Heights and applicable Town road ordinances and regulations.

(b) All Lots, i.e., Lots 1 through 7, are subject to a specific covenant whereby each shares equally the periodic costs of maintaining and repairing the stormwater and related improvements appurtenant to them, as depicted on the plat of survey included in Exhibit A. The specifics of this obligation shall conform to the State of Vermont and Town permits for Hillview Heights and applicable State and Town rules, regulations and standards.

(c) The covenants and obligations described in subsections (a) and (b) of this section will be subject to enforcement by the Declarant or the Homeowners Association, as applicable. The Article IV easements shall include any easements necessary for the carrying out of the provisions of this section 3.01.

ARTICLE IV

EASEMENTS

Section 4.01. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration and any amendments thereto, the Declarant hereby expressly reserves a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the Community, without obligation and without charge to the Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Community for the purposes of development, construction and sale of the Lots. The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right to access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Community; and the right to tie into any portion of the Community with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(b) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, and sales offices in the Community; and

(c) no rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit-claim deed from the Declarant releasing such right, privilege, or easement by express reference thereto.

Section 4.02. Easements for Completion; Utilities. The Declarant hereby expressly reserves an easement through the Common Property for the purpose of completing or making improvements described in this Declaration; to make improvements in the Community; and to erect and remove signs advertising

the community. The Declarant also reserves the right to grant and reserve easements and rights of way through, under, over and across the Community for the installation, maintenance, inspection, repair and replacement of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone and other utilities. If damage is inflicted by the Declarant in the exercise of the easement and rights granted by this Section, it shall promptly repair such damage to the condition existing prior thereto. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated on a Lot except as planned and approved by the Declarant prior to the conveyance of the Lot or by the Homeowners Association thereafter. This easement shall in no way affect any other recorded easements on any Lot.

Section 4.03. Declarant's Easement to Correct Drainage. For a period of five years from the date hereof, the Declarant reserves a blanket easement and right on, over and under the ground within all of the Lots to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practical. The Declarant shall give reasonable notice of intent to take such action to all affected Lot owners, unless in the opinion of the Declarant, an emergency exists which precludes such notice.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.01. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever, including, without limitation, fences, excavations or other alterations to grade shall be commenced or placed upon any part of the Community, except as conform to any applicable Town of Richmond ordinances and rules.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS IN HOMEOWNERS ASSOCIATION

Section 6.01. Membership. Each Owner of any of Lot shall be a member of the Homeowners Association, provided that any person or entity which holds such interest merely as a security for the performance of an obligation shall not be a member. Each membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 6.02. Initial Member. The Declarant, or the successor in interest of the Declarant, shall hold all memberships in the Homeowners Association. At such time as any of the Lots is conveyed by the Declarant or its successor in interest, the purchaser of that Lot shall automatically acquire the corresponding membership of the Lot in the Homeowners Association, and the number of memberships in the Homeowners Association held by the Declarant, or his successor in interest, shall be reduced accordingly.

Section 6.03. Voting Rights. The Homeowners Association shall have one class of voting membership. The owner of a Lot shall have one vote on account of the Lot. If more than one person holds an interest as Owner of a Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves shall determine, but in no event shall there be more than one vote cast with respect to any Lot.

ARTICLE VII

ASSESSMENTS AND LIENS

Section 7.01. Creation of Lien and Personal Obligation for Assessments. (a) The Declarant hereby covenants, and each Owner of any Lot, whether or not it shall be so expressed in its deed, covenants and agrees to pay to the Homeowners Association all periodic assessments or charges and special assessments for capital improvements, including any relating to the covenants and obligations in Section 3.01 of Article III.

(b) The periodic and special assessments, together with penalty, charges, interest, costs and reasonable attorney's fees, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which each such assessment is made, and each such assessment together with penalty charges, interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment was made.

Section 7.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Lot Owners or those of them sharing certain obligations hereunder, to maintain, repair and/or replace any open area, and to meet any and all other expenses and obligations incurred by the Homeowners Association including but not limited to, bills, professional fees, taxes and insurance premiums.

Section 7.03. Periodic Assessments. (a) The Board of Directors shall levy a monthly or other periodic assessment against each Lot. The assessment shall be based upon an annual expenditure budget adopted by the Board of Directors which shall include the costs of maintenance and repair of leases owned or managed by the Homeowners Association, and the costs of all other expenses and obligations, including bills, professional fees, taxes and insurance premiums. A Lot not subject to a covenant and obligation under the provisions of Section 3.16 hereof shall not be subject to an assessment for those expenses.

(b) No special assessment shall be levied, however, without approval of a majority of the Owners voting in person or proxy at a Homeowners Association meeting duly warned for that purpose.

Section 7.04. Date of Commencement of Assessments. The date of commencement of any periodic assessment levied pursuant to this Article shall be fixed in the resolution authorizing such assessment. Periodic assessments shall be due and payable on the first day of each and every month, unless otherwise specified, and special assessments shall be due and payable as set forth in the resolution authorizing such special assessments.

Section 7.05. Insurance. The Homeowners Association shall maintain insurance for all improvements and personal property of the Association against all losses caused by fire or other insurable hazards in amounts sufficient to cover the full replacement cost of any repair or construction work in the event of damage or destruction by any hazard, and shall also contain a broad form of public liability insurance covering all of the property owned by the Association. All premiums shall be included in the monthly assessments.

Section 7.06. Nonpayment of Assessments and Remedies. If any assessment is not paid within 30 days after the date when due, there shall also be due and owing a penalty charge of five percent of the

delinquent amount or whatever percentage of the delinquent amount the Board of Directors may determine from time to time. In addition, interest on the delinquent amount from the due date, of one percent per month or such other rate of interest as determined by the Board of Directors from time to time, shall also be due and owing. The Association may bring an action at law against the Owner personally obligated to pay the same, or may take any other legal action against a Lot or its Owner, including the foreclosure of the lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse or abandonment of a Lot. In the event collection is required, the Owner or Lot responsible for the delinquent assessments, shall also be liable for any reasonable attorney's fees or costs incurred by the Association in connection with the collection of the delinquent assessment.

Section 7.07. Subordination of the Lien or Mortgages. Any lien arising from the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien, which shall continue in existence, except where a first mortgagee has taken record title to the Lot pursuant to foreclosure.

ARTICLE VIII

TERM; ENFORCEMENT

Section 8.01. Generally. Each Owner shall be governed by and shall comply with the terms of this Declaration and the Bylaws of the Homeowners Association, and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Failure of a Lot Owner to comply therewith shall entitle the Association or other Lot Owners to the following relief:

(a) Liability. A Lot Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, negligence or carelessness or by that of any member of his family or his or their guests, employees, agents, lessees or other invitees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Homeowners Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of any open lands.

(b) Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Lot Owner to comply with the terms of this Declaration, or the Bylaws of the Homeowners Association, and any and all regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees.

Section 8.02. Enforcement. The Homeowners Association, or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Homeowners Association or an Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.03. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, so long as law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law for successive periods not to exceed the period permitted by such law, provided such renewal or

extension is approved by at least a majority of the Owners present or represented by proxy at a meeting duly called for such purpose. Further, no such renewal or extension shall be effective unless there is filed for record in the Land Records of the Town of Richmond on or before the effective date thereof an instrument executed which shall state the terms of such renewal or extension and which shall contain a certification that such extension and renewal was duly approved. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 8.04. Amendment. (a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing.

(b) This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the Owners other than the Declarant and the consent of the Declarant. Amendments to this Declaration shall become effective upon recording in the Land Records of the Town of Richmond, unless a later effective date is specified therein.

Section 8.05. Miscellaneous. (a) The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

(b) Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

(c) The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this ____ day of _____, 2023.

WITNESSETH:

HILLVIEW HEIGHTS, LLC

By: _____

A Member

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At _____ in said County and State on this ____ day of September, 2023, personally appeared _____, a Member of Hillview Heights, LLC, and he/she acknowledged this instrument by him/her signed and sealed to be his/her free act and deed and the free act and deed of Hillview Heights, LLC.

Before me _____
Notary Public

Exhibit A
to the
Declaration of
for
Hillview Heights